

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shevani Patel	Team: Squad #3	CCRB Case #: 201501968	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 03/08/2015 4:31 AM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 9/8/2016	EO SOL 9/8/2016	
Date/Time CV Reported Mon, 03/09/2015 10:27 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/18/2015 1:24 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Eduardo Perezromero	22325	940571	042 PCT
2. POM John Moise	29985	946014	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kevin Istorico	31534	952884	042 PCT
2. POM Gregory Tomassi	13234	953486	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Eduardo Perezromero	Force: PO Eduardo Perez-Romero used physical force against § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(4-b), § 87(2)(g)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(4-b), § 87(2)(g)	§ 87(2)(b)

Case Summary

On March 8, 2015, at approximately 4:31 a.m., PO Kevin Istorico and PO Gregory Tomassi of the 42nd Precinct responded to a dispute between § 87(2)(b) and § 87(2)(b) in front of § 87(2)(b) in the Bronx. § 87(2)(b) was arrested. Other officers from the 42nd Precinct responded to the scene. § 87(2)(b) denied having sustained any injury from the dispute or his apprehension. PO Robert Moise and PO Eduardo Perez-Romero of the 42nd Precinct transported § 87(2)(b) back to the stationhouse. PO Moise drove and PO Perez-Romero sat in the backseat next to § 87(2)(b). § 87(2)(b) alleged that once the car began moving, PO Perez-Romero grabbed § 87(2)(b) by his armpits, pushed him so his back rested on the floor of the car between the front and back seats and punched the left side of his face with a closed fist about 50 to 100 times (**Allegation A**). § 87(2)(b) was taken to § 87(2)(b) where he was diagnosed with a left orbital fracture and laceration to his face. § 87(4-b) § 87(2)(g)

Mediation, Civil and Conviction Histories

This case was ineligible for mediation. § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b) claiming assault, battery, false arrest, emotional distress and physical pain and injury, and seeking one million and two hundred thousand for redress (Board Review 01).

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officers CCRB Histories

- This is the first complaint filed by § 87(2)(b) (Board Review 04).
- PO Perez-Romero has been a member of the NYPD for nine years and has had 16 previous CCRB allegations involving four cases with no substantiated allegations. Nine of the previous allegations are involving physical force. In case 201406540, it was alleged by a civilian that in the back of the RMP en route to the 42nd Precinct stationhouse, PO Perez-Romero punched his face, elbowed his ribs and head, struck his elbows, side, and face with an asp and pepper-sprayed him. PO Moise was driving. There was no other officer in the car. None of the allegations were substantiated.
- PO Moise has been a member of service for seven years and has eight previous CCRB allegations involving five cases with one other misconduct allegation for failing to prepare memo book entries.

Investigative Findings and Recommendations

Allegation A – Force: PO Eduardo Perez-Romero used physical force against § 87(2)(b)
§ 87(2)(b) had no complaints regarding his apprehension. He stated that an officer identified by investigation as PO Istorico grabbed his arms. § 87(2)(b) said that he resisted by holding his arms stiff in front of his body. An officer identified by investigation as PO Tomassi also approached and tried to pull his arms. While each officer held onto § 87(2)(b)'s arms, they tripped his feet and brought him to the ground face down. § 87(2)(b) put his own hands behind his back. The officers handcuffed him. The entire struggle lasted about 2 or 3 minutes. § 87(2)(b) sustained no injury from being handcuffed. Several more officers arrived. § 87(2)(b) was transported in an unmarked black Impala. He was seated behind the front passenger's seat. An officer identified by investigation as PO Moise drove while an officer identified by investigation as PO Perez-Romero sat next to § 87(2)(b).

After the car began moving, PO Perez-Romero grabbed § 87(2)(b)'s armpits. § 87(2)(b) tried to move away from the officer and PO Perez-Romero pushed him onto the floor of the car in between the seats. § 87(2)(b)'s back was on the ground and his head was behind the driver's seat. PO Perez-Romero was on the seat. Before he was moved to the ground, § 87(2)(b) was behaving calmly. He was quiet and was not doing anything with his body. PO Perez-Romero repeatedly punched the left side of § 87(2)(b)'s face with a closed fist about 50 to 100 times. He said, "You like that? You like it?" PO Moise continued to drive, and did not say anything or react.

The command log entry notes that § 87(2)(b) had lacerations and contusions on his face (Board Review 05). The medical treatment of prisoner report notes that § 87(2)(b) sustained a left orbital floor fracture (Board Review 06). His arrest photograph shows dark bruising underneath his left eye and either bruising or abrasions on and above his left eyebrow (Board Review 07).

In his medical records from § 87(2)(b), it is noted that § 87(2)(b) stated that he was punched in the face by the NYPD. He had facial abrasions and left eye swelling. A CT scan revealed a left orbital floor fracture.

§ 87(2)(b) provided photographs of his face taken on March 8, 2015 by his girlfriend, § 87(2)(b). His left eye is swollen shut and bruised entirely. Over his left eyebrow and on his left cheek are large abrasions. There are several small cuts on his forehead, his right eyebrow and underneath his right eye (Board Review 08).

A 54 second cell phone video taken of the footage from Leslie Deli Grocery depicts a short portion of the apprehension. In the video, PO Tomassi and PO Istorico are struggling with § 87(2)(b) against an ice machine. Because of the distance between the incident and the camera, as well as the officers' positioning behind § 87(2)(b)'s face cannot be seen. It is not evident whether or not § 87(2)(b)'s face is against any surface (Board Review 09).

§ 87(2)(b) who provided a telephone statement and a sworn statement, stated that as PO Tomassi and PO Istorico attempted to handcuff him, § 87(2)(b) pulled his arms away. They got his hands behind his back and struggled from in front of the gates of the apartment to a dumpster right beside it. § 87(2)(b) spun around as the officers held his arms. They fell to the ground. § 87(2)(b) landed on his stomach. He tried to move on the ground, as the officers were on top of him. They tussled until after about a minute or two when the officers managed to stand him up, but were still struggling with him. The officers placed § 87(2)(b) against the dumpster. More officers came and he was handcuffed. Before § 87(2)(b) was seated in the car, § 87(2)(b) made eye contact with him and saw no injury to § 87(2)(b)'s face.

§ 87(2)(b)'s girlfriend, § 87(2)(b) provided a telephone statement. She did not witness any part of § 87(2)(b)'s apprehension, or see him before he left the scene.

PO Tomassi and PO Istorico provided generally consistent accounts of the apprehension. As they tried to grab § 87(2)(b)'s arms, he moved them away from their reach. Once they had control of his arms, § 87(2)(b) tried to pull away and they all fell to the floor due to the momentum. PO Tomassi did not recall how § 87(2)(b) landed, and PO Istorico said that § 87(2)(b) landed face down. The officers stood up, and stood § 87(2)(b) up, lifting him by his back. Once they stood, they fell into ice machine. More officers arrived assisted them in apprehending § 87(2)(b). They brought him to the ground and they pulled his arms behind his back. PO Istorico did not recall if

§ 87(2)(b) had any injury on him on scene. PO Tomassi did not observe any visible injury on him. § 87(2)(b) did not complain of any injury while on scene. Neither of these officers was in the transport car. PO Istorico saw the lacerations on § 87(2)(b)'s face. At no point was PO Istorico made aware of § 87(2)(b) being moved to the ground of the transport car and punched. PO Tomassi did not have much interaction with § 87(2)(b) at the stationhouse, and did not see any injury on him.

According to PO Perez-Romero, when he arrived to assist with the apprehension, PO Istorico and PO Tomassi were struggling with § 87(2)(b). § 87(2)(b) held his arms stiff on his chest. All three fell to the ground. The officers fell on top of § 87(2)(b). § 87(2)(b) was face down in a crouched position with his hands stiff under his chest. PO Istorico was to the left of § 87(2)(b) and PO Tomassi was to the right holding trying to pull § 87(2)(b)'s arm from underneath him. § 87(2)(b) held his arms and moved his torso around. His face was on the pavement. PO Perez-Romero pulled § 87(2)(b)'s legs flat onto the ground and held onto them. PO Moise went to the other side of § 87(2)(b) and pulled the hand out. The officers were able to bring both arms behind § 87(2)(b)'s back. When the officers stood § 87(2)(b) up, PO Perez-Romero saw blood on § 87(2)(b)'s face and a laceration on the left side of his forehead.

PO Perez-Romero stated that he and PO Moise escorted § 87(2)(b) to their vehicle, which was parked directly in front of the building. § 87(2)(b) was brought in through the back driver's side door. § 87(2)(b) did not want to put his feet into the car. PO Perez-Romero pulled him inside and seated him behind PO Moise, who drove. PO Perez-Romero sat in the backseat on the passenger's side. The drive to the stationhouse was about one and a half minutes. § 87(2)(b) did not sit still. Because there was no cage, because § 87(2)(b) had not yet been searched (and it was unknown as to what he had on him) and because PO Perez-Romero did not want § 87(2)(b) to kick PO Moise as he was driving, PO Perez-Romero held § 87(2)(b) down by placing his left hand on the handcuffs and his right his hand on his shoulder. § 87(2)(b) pushed and moved his body towards PO Perez-Romero as PO Perez-Romero pushed him the other way. Aside from his shoulders and the handcuffs, PO Perez-Romero never grabbed any other part of § 87(2)(b)'s body while inside of the car. PO Perez-Romero never moved § 87(2)(b) to the ground of the car. He was always in a seated position. PO Perez-Romero never punched § 87(2)(b). He never struck his face or any other part of his body in any way inside of the car. § 87(2)(b) was cursing at PO Perez-Romero, making statements about how he was in prison.

PO Perez-Romero has had 16 previous CCRB allegations involving four cases. Nine of these allegations are involving physical force. In case 201406540, it was alleged by a civilian that in the back of the RMP en route to the 42nd Precinct stationhouse, PO Perez-Romero punched his face, elbowed his ribs and head, struck his elbows, side, and face with an asp and pepper-sprayed him. PO Moise was driving. There was no other officer in the car. None of the prior allegations were substantiated.

According to PO Moise, § 87(2)(b) was handcuffed on the ground. He did not see if § 87(2)(b)'s face ever struck the ground during the arrest. When PO Moise drove the car back to the stationhouse, § 87(2)(b) sat behind him with PO Perez-Romero next to him. PO Moise never observed any struggle in the backseat. § 87(2)(b) was yelling and cursing about being in custody. PO Moise never saw PO Perez-Romero strike § 87(2)(b) or punch him in the face. PO Moise never saw PO Perez-Romero to the floor of the car. Both PO Moise and PO Perez-Romero told § 87(2)(b) to be quiet. There was no physical interaction between PO Perez-Romero and § 87(2)(b). PO Moise never heard PO Perez-Romero state, "You like that," or any similar comments.

Once they reached the stationhouse, PO Moise and PO Perez-Romero removed § 87(2)(b) from the vehicle and escorted him inside. PO Moise saw lacerations on § 87(2)(b)'s face. He did not recall if he saw any injury on § 87(2)(b) on scene because the arrest happened so quickly. He also added that it had been dark out.

Patrol Guide Procedure 203-11 authorizes officers only to use the minimum necessary force (Board Review 10).

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date